

By: Solomons

H.B. No. 1787

A BILL TO BE ENTITLED

AN ACT

relating to the designation or appointment of registered agents for service of process, notice, or demand for certain entities; the duties of a registered agent; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.201, Business Organizations Code, is amended by amending subsection (b) and by adding new subsections (d), (e) and (f) to read as follows:

(b) The registered agent:

(1) is an agent of the entity on whom may be served any process, notice, or demand required or permitted by law to be served on the entity;

(2) may be:

(A) an individual who:

(i) is a resident of this state; and

(ii) has consented to serve as the registered agent of the entity; or

(B) an organization, other than the domestic or foreign filing entity to be represented, that:

(i) is registered or authorized to do business in this state; and

(ii) has consented to serve as the registered agent of the entity; and

(3) must maintain a business office at the same address as

1 the entity's registered office.

2 (d) The appointment of an person as registered agent by an  
3 organizer or managerial official of domestic or foreign filing  
4 entity in a registered agent filing is an affirmation by the  
5 organizer or managerial official that the person named as  
6 registered agent has consented to serve as such.

7 (e) A person appointed as the registered agent of a  
8 represented entity is not liable by reason of that person's  
9 appointment as registered agent for the debts, liabilities and  
10 obligations of the represented entity.

11 (f) The maintenance of a person named as registered agent  
12 after the sale, acquisition, or transfer of a majority in interest  
13 of the outstanding ownership or membership interests of a  
14 represented entity is an affirmation by the governing authority of  
15 the represented entity that governing authority has verified that  
16 the person named as registered agent consents to continue to serve  
17 as such.

18 SECTION 2. Section 5.204(a) and (d), Business Organizations  
19 Code, are amended to read as follows:

20 Sec. 5.204. RESIGNATION OF REGISTERED AGENT. (a) A  
21 registered agent of a filing entity or a foreign filing entity or a  
22 person who has been named as an entity's registered agent without  
23 the person's consent to the appointment as registered agent may  
24 resign as the registered agent by giving notice to that entity and  
25 to the appropriate filing officer.

26 (d) On compliance with Subsection (b) and (c), the  
27 appointment of the registered agent and the registered office

1 address terminate[~~s~~]. The termination is effective on the 31st day  
2 after the date the secretary of state receives the notice.

3 SECTION 3. Chapter 5, subchapter E, Business Organizations  
4 Code, is amended to add new Sections 5.205, 5.206, 5.207 and 5.208  
5 to read as follows:

6 Sec. 5.205. DUTIES OF REGISTERED AGENT. (a) The only  
7 duties of a person appointed as a registered agent are:

8 (1) to forward to or otherwise notify the represented  
9 entity at the address most recently supplied to the agent by the  
10 entity any process, notice, or demand that is served on the agent;  
11 and

12 (2) to provide the notices required or permitted by  
13 law to be given to the represented entity to the address most  
14 recently supplied to the agent by the entity.

15 (b) A person who has been named as the registered agent for a  
16 represented entity without the person's consent is not required to  
17 perform the duties described in this section.

18 Sec. 5.206. DESIGNATION OF REGISTERED AGENT WITHOUT  
19 AUTHORIZATION OR CONSENT; PENALTIES AND LIABILITIES. (a) Any  
20 organizer, or managerial official of a represented entity, who  
21 designates a person as the registered agent for that entity in a  
22 registered agent filing without that person's authorization or  
23 consent, commits an offense under Section 4.008.

24 (b) A person who is designated as a registered agent for a  
25 represented entity and who has not consented to the appointment as  
26 registered agent may recover damages, court costs, and reasonable  
27 attorney's fees if the person incurs a loss and the loss is caused

1 by the person's unauthorized appointment as agent.

2 (c) A person may recover damages under subsection (b) from:

3 (1) each organizer or other person required to sign  
4 the certificate of formation that designated the person as the  
5 initial registered agent of the domestic represented entity;

6 (2) any managerial official of a represented entity  
7 who directed the signing and filing of the registered agent filing  
8 that designated the person as the entity's registered agent; or

9 (3) the represented entity that authorized the filing  
10 of the registered agent filing.

11 Sec. 2.507. IMMUNITY FROM LIABILITY. (a) A person who has  
12 not consented to serve as registered agent and who has been  
13 designated as a registered agent of a represented entity shall not  
14 be liable by reason of being named as a registered agent under a  
15 judgment, decree, or order of a court, agency, or tribunal of any  
16 type, or in any other manner, in this or any other state, or on any  
17 other basis, for a debt, obligation, or liability of the  
18 represented entity whether arising in contract, tort, or otherwise.

19 (b) A person who has not consented to serve as registered  
20 agent and who has been designated as a registered agent of a  
21 represented entity shall not be liable to the represented entity or  
22 to a person who reasonably relied on the unauthorized designation  
23 by reason of the person's failure or refusal to perform the duties  
24 of a registered agent under 5.205.

25 Sec. 2.508. DEFINITIONS. For purposes of this subchapter:

26 (1) "Registered agent filing" means:

27 (A) the certificate of formation of a domestic

1 represented entity;

2 (B) the application for registration of a foreign  
3 represented entity;

4 (C) an appointment of agent by an unincorporated  
5 nonprofit association;

6 (D) an appointment of agent by a Texas financial  
7 institution;

8 (E) a statement by a represented entity to change its  
9 registered office, its registered agent, or both;

10 (F) a certificate of merger or certificate of  
11 conversion;

12 (G) a certificate of amendment to the certificate of  
13 formation or the registration of a represented entity;

14 (H) a restated certificate of formation of a  
15 represented entity;

16 (I) any other instrument that is required or permitted  
17 to be filed by a represented entity that effects a change or  
18 correction to the instruments identified in Paragraphs (A) through  
19 (H); and

20 (K) a certificate of reinstatement filed pursuant to  
21 chapter 9 or chapter 11 of this code.

22 (2) "Represented entity" means:

23 (A) a domestic filing entity;

24 (B) an unincorporated nonprofit association for which  
25 an appointment of agent has been filed;

26 (C) a Texas financial institution for which an  
27 appointment of agent has been filed;

1           (D) a defense base development authority for which an  
2 appointment of agent has been filed;

3           (E) any corporation, association or other  
4 organization incorporated or organized under any special statute of  
5 this state that is governed in whole or in part by the Business  
6 Organizations Code, or to which the general corporate laws are  
7 applicable.

8           (F) a foreign filing entity for which a registration  
9 has been filed;

10          (G) a foreign limited liability partnership for which  
11 a registration has been filed;

12          (H) a foreign financial institution for which a  
13 registration has been filed; and

14          (I) any corporation, association or other  
15 organization incorporated or organized under the laws of a  
16 jurisdiction other than Texas that is granted authority to conduct  
17 its affairs within this state under any special statute of this  
18 state that is governed in whole or in part by the Business  
19 Organizations Code, or to which the general corporate laws are  
20 applicable.

21           SECTION 4. The changes in law made by this Act apply only to  
22 the designation or appointment of a registered agent made on or  
23 after the effective date of this Act. The designation or  
24 appointment of a registered agent made before the effective date of  
25 this Act is governed by the law in effect on the date the  
26 designation or appointment was made, and the former law is  
27 continued in effect for that purpose.

1 SECTION 5. This Act takes effect September 1, 2009.